

5833
DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-190720

DATE: March 30, 1978

MATTER OF: A.J. Leftheriotis Ltd.

DIGEST:

1. Bid was properly determined nonresponsive where required descriptive literature showed non-compliance with solicitation specifications, notwithstanding blanket statement of compliance in bid cover letter.
2. Acceptance of amendment to IFB requiring "naturally aspirated" engine does not cure defect in bid descriptive literature offering turbo-charged engine.
3. Bidder relies on oral advice regarding solicitation at own risk.
4. Offer to furnish substitute item to cure nonresponsive bid following bid opening cannot be accepted in formally advertised procurement.

On August 19, 1977, the Federal Aviation Administration Aeronautical Center, Oklahoma City, Oklahoma (FAA), issued invitation for bids (IFB) AC3A-7-0623 (-0623), for four van-mounted 50-KW powerplants and two 50-KW diesel engine generator sets, plus options for two additional powerplants and one generator, together with supporting technical documentation, instruction books, engineering services and drawings. On the same day, the FAA issued a substantially identical IFB, designated AC3A-7-0624 (-0624), for four van-mounted 75-KW powerplants and two 75-KW diesel engine generator sets, plus options and support. Three amendments were issued to IFB -0623, the first modifying the description of the diesel engine generator sets

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to require a "naturally aspirated" engine, the second changing the bid opening date from September 15, 1977, to September 9, 1977, and the third increasing the firm quantity of engine generator sets from two to four and the optional quantities from one to "1 or 2." Amendment 3 also postponed the bid opening to September 14, 1977.

When bids were opened, A.L. Leftheriotis Ltd. (Lefthuriotis), was the low bidder on IFB -0623. This was also the case for IFB -0624, bids for which were opened on September 9, 1977. However, the required descriptive literature submitted by Leftheriotis for both IFB's showed that it proposed to supply equipment not in conformance with the specifications. Therefore, FAA determined Leftheriotis' bids to be nonresponsive, and award was made under both IFB's to the second low bidder, Libby Welding Company, Inc., on November 9, 1977. Leftheriotis protested the awards to this Office on November 21, 1977.

The "NOTICE TO BIDDERS," on page 6 of both IFB's, stated that descriptive literature was required to be furnished with the bid to establish, for purposes of evaluation and award, compliance with:

"* * * the following paragraphs of FAA Specification FAA-E-2204b as supplemented by Supplement-1 (Attachment 'f') and as amended in Article XI herein:

"a. Paragraph 3.3.2 as regards to engine RPM and the brake horsepower output.

* * * * *

"c. Paragraph 3.2.12c as regards to prior approval of the transfer switch."

The notice went on to state:

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"* * * Failure of descriptive literature to show that the product offered conforms to the above paragraphs of the specification will require rejection of the bid. * * *"

The quoted specification paragraph 3.3.2 was changed by amendment 1 for solicitation -0623 to require a "naturally aspirated" engine. No similar amendment was made to solicitation -0624. However, paragraph 3.2.12c of the specifications for both solicitations, as amended, required:

"A transfer switch test report which has prior FAA approval giving complete identification and photographs of the switch and relays."

The FAA gave as its reason for finding Leftheriotis' bids nonresponsive the fact that (1) the literature submitted for solicitation -0623 showed that Leftheriotis proposed to use a turbocharged, rather than a naturally aspirated, engine and (2) the literature submitted for both solicitations showed that Leftheriotis offered a transfer switch that did not have a test report with prior FAA approval. Leftheriotis does not challenge the correctness of these findings, but rather argues that any deficiencies in its bids are cured by the statements in the cover letters that the generator sets offered are "IN COMPLETE ACCORD" with the appropriate FAA specifications, and that accessories would meet specifications and be subject to approval and acceptance by the FAA.

We have consistently held that blanket statements of compliance are not sufficient to cure ambiguities in a bid. Spectrolab, Inc., B-189947, December 7, 1977, 77-2 CPD 438; International Signal & Control Corp. et al., B-185868, March 16, 1976, 76-1 CPD 180. Submission of descriptive data, where, as here, such data is to be used for bid evaluation, is a matter of responsiveness. Since Leftheriotis' submissions clearly showed that its bids were not in conformity with the relevant FAA specifications, their rejection was required. Austin-Campbell Co.,

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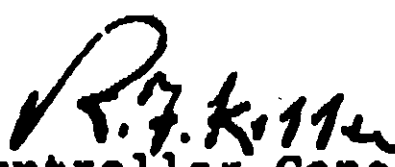
B-189032, September 28, 1977, 77-2 CPD 236; Fabcraft, Inc., dba FABCO, B-186973, November 5, 1976, 76-2 CPD 384.

Leftheriotis contends that its acceptance of amendment 1 to solicitation -0623 constituted its agreement to meet the requirement that the diesel engine for the generator set be "naturally aspirated." However, as stated, the descriptive literature contradicted this assertion by offering a turbocharged engine. Acceptance of amendment 1 cannot be said to have cured this defect, since the protester did not submit any additional descriptive literature which would have corrected that furnished.

The protester alleges that it was informed orally by the contracting office that all that was required in the bid with respect to the transfer switch was the designation of the switch proposed. This assertion is not supported by the agency report. Such an oral statement, even if made, is relied upon by a bidder at his own risk. See Deere & Company, B-189136(1), June 28, 1977, 77-1 CPD 460, and decisions cited therein.

Finally, in its letter of December 6, 1977, to this Office, Leftheriotis offered to furnish, at no additional cost, any other transfer switch that FAA requires to replace one which does not have prior FAA approval. Such a change, coming as it does after bid opening, cannot be permitted in a formally advertised procurement. Vemco Corporation, B-187318, February 15, 1977, 77-1 CPD 113; 40 Comp. Gen. 432 (1961).

Accordingly, Leftheriotis' protest is denied.


Deputy Comptroller General
of the United States



D. Mirisch FL I

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20541

IN REPLY
REFER TO

B-190720

March 30, 1978

The Honorable Thomas J. Downey
House of Representatives

Dear Mr. Downey:

In response to your inquiry on behalf of Mr. A.L. Leftheriotis, dated January 23, 1978, we are enclosing a copy of our decision in the bid protest made by Mr. Leftheriotis to this Office on November 21, 1977.

This decision represents our resolution of the matters presented by Mr. Leftheriotis. We hope that it will be of use to you.

Sincerely yours,

Deputy

R. F. K. 11/11
Comptroller General
of the United States

Enclosure